

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )

Closed Captioning and Video )  
Description of Video Programming )

Implementation of Section 305 of )  
the Telecommunications Act of 1996 )

Video Programming Accessibility )

MM Docket No. 95-176

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**REPLY OF PRIMESTAR PARTNERS L.P.**

PRIMESTAR Partners L.P. ("PRIMESTAR") hereby submits its reply in response to the comments submitted pursuant to the Notice of Proposed Rulemaking ("*Notice*"), released in the above-captioned proceeding on January 17, 1997.<sup>1</sup> The Commission's *Notice* sought comment on proposed rules and implementation schedules for captioning of video programming, as required by Section 305 of the Telecommunications Act of 1996 ("1996 Act").<sup>2</sup> Section 305 added a new Section 713, Video Programming Accessibility, to the Communications Act of 1934, as amended, 47 U.S.C. § 713.

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<sup>1</sup> FCC 97-4, released January 17, 1997.

<sup>2</sup> Pub.L. 104-104, 110 Stat. 56 (1996).

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PRIMESTAR continues to urge the Commission to adopt rules and implementation schedules for captioning video programming that recognize the technical and economic realities of the production and distribution of such programming, and that will ensure maximum access by all parts of the viewing community. Specifically herein, PRIMESTAR reiterates its support for a 10 year transition period and a less than 100% benchmark for captioning of new programming; Commission forbearance from mandating specific targets or deadlines for captioning of library programming; exemption of interstitial programming from the proposed captioning requirements; and placement of ultimate responsibility for compliance with the new regulations on program producers.

**I. TRANSITION RULES FOR NON-EXEMPT NEW PROGRAMMING**

**A. Captioning of Non-Exempt New Programming Should Be Phased In Over A Ten Year Period**

The vast majority of industry commenters support one or the other of the Commission's alternate proposals to require that all non-exempt new programming be closed-captioned within either 8 or 10 years, with the percentage of required captioning increasing incrementally.<sup>3</sup> These comments reflect the parties' recognition that in order to effect a smooth and efficient implementation schedule, program owners, producers and distributors will require sufficient time to formulate appropriate business plans, implement procedures and allocate the necessary resources in order to assume these responsibilities.

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<sup>3</sup> See, e.g., Comments of Ameritech (10 years); Comments of ABC, Inc. (minimum 8 years); Comments of DirectTV, Inc. (10 years).

PRIMESTAR continues to believe that adoption of the longer 10 year period will maximize the efficiency of this implementation schedule.

Other parties propose a much shorter transition period of between 2 and 4 years.<sup>4</sup> While these parties, which primarily represent organizations devoted to deaf and hard of hearing issues, understandably desire the fastest possible implementation of closed-captioning requirements, the majority of industry comments make clear that any transition period of less than 8 years would only result in inefficiencies and distortions within the marketplace which would have a detrimental impact not only on hearing-impaired viewers, but on all other segments of the audience as well. Such a result clearly is contrary to the intent of Congress in implementing Section 713.

**B. The Maximum Percentage of Non-Exempt New Programming That Must Be Captioned Under the Rules Should Be Less Than 100 Percent**

Section 713 anticipates situations in which mandatory captioning would place undue burdens on the program provider or producer, and, accordingly, the statute provides for a waiver mechanism to address these situations. The Commission's *Notice* sets forth a list of factors which it would use to analyze such petitions. *Notice* at ¶6. In its comments, PRIMESTAR suggested that a more efficient way to deal with many of these situations would be to set the mandatory captioning benchmark for new non-exempt programming at a figure below 100%. Other parties suggest this same approach in their comments. Home Box Office, for instance, suggests that the maximum requirement should be no more than 80%.<sup>5</sup>

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<sup>4</sup> See, e.g., Comments of Access to Independence and Mobility (2-4 years); Comments of Consumer Action Network (2-3 years).

<sup>5</sup> See Comments of Home Box Office at 9.

The rationale for lowering the captioning maximum, as opposed to relying exclusively on petitions for waiver in individual situations, remains strong. As PRIMESTAR noted in its comments, many situations in which a petition for waiver would be required under the Commission's current proposal involve programming which has a very short period of usefulness (and therefore would not warrant the additional costs of captioning), or for which there may be insufficient time to allow for captioning. In many such situations, if a waiver was the only solution, there would be a need for some type of emergency expedited waiver process at the Commission. In order to deal with such situations, it would be far more efficient for the Commission to permit a discrete amount of non-captioned new programming. Adoption of the less-than-100% benchmark, therefore, would serve the purposes of Section 713 by providing an efficient way of creating a "general" exemption without the necessity for filing with the Commission.

## **II. TRANSITION RULES FOR NON-EXEMPT LIBRARY PROGRAMMING**

PRIMESTAR recommended in its comments that the Commission adopt no percentage benchmarks or time deadlines for the captioning of library programming. PRIMESTAR's position is based on its belief that the natural workings of the marketplace would be the most efficient way to maximize the availability of captioned library programming to consumers. A number of other parties, including Encore Media Corporation, ABC, Inc., and the National Association of Broadcasters, agree with PRIMESTAR. Other parties seek a variety of different requirement mechanisms for the captioning of library programming.

PRIMESTAR continues to support a "hands-off" approach to the captioning of library programming. As demonstrated in the comments, library programming already is beginning

to be captioned on a voluntary market-driven basis.<sup>6</sup> However, the imposition of artificial deadlines on such programming will only result in the disruption of this trend by forcing program providers to expend significant amounts of money to caption library programming regardless of whether there is significant demand for such captioning from consumers. Rather than face such a burden in situations where market forces do not generate sufficient returns, program providers would simply choose not to air such programming at all, thereby denying access to all viewers, and instead rely on repeated showings of previously-captioned stock. Such a result runs contrary to the statutory mandate to maximize the accessibility of library programming to hearing-impaired audiences.

### **III. EXEMPT PROGRAMMING**

In the *Notice*, the Commission tentatively decided to exempt a number of classes of programming under Section 713(d) on the basis of the economic burden which mandatory captioning would present to such classes. Among the classes of material for which PRIMESTAR supports such exemption is interstitial programming. As PRIMESTAR noted in its comments, the benefits of requiring captioning of such programming are far outweighed by the costs involved.

Again, opinion regarding this issue tends to split between industry representatives and hearing impaired advocacy groups. Generally, industry commenters support the Commission conclusion that captioning of interstitial materials would be economically burdensome, while opponents of this conclusion assert that such materials are important to hearing-impaired viewers.<sup>7</sup>

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<sup>6</sup> See, e.g., Comments of Home Box Office at 17, 18.

<sup>7</sup> See, e.g., Comments of NBC, Inc.; Comments of The Coalition of Protection and Advocacy Systems.

Section 713(d) clearly provides for the exemption from captioning of programs or services where the Commission determines that provision of such captioning “would be economically burdensome *to the provider or owner of such programming.*” 47 U.S.C. §713(d)(1)(emphasis added). As PRIMESTAR noted, interstitials typically are produced on a tight schedule and have a very short shelf-life. Further, they are usually produced by networks or distributors in-house. Thus, in order to comply with captioning requirements, providers would be forced to hire their own in-house captioning personnel. As a result, mandatory captioning would raise the cost of such programming exponentially. On the other hand, the benefits of captioning interstitials would be minimal. The pertinent information contained therein is almost always visually displayed through text or graphics. Further, such information is largely concerned with airtime announcements and program descriptions, and is readily available through other sources such as newspaper listings and television viewer guides.

Interstitial material thus represents exactly the kind of programming for which a cost benefit analysis of mandatory captioning leads to the conclusion that such a mandate would be unduly burdensome on the programming party. The Commission should adopt its proposed exemption of interstitial materials from required captioning.

#### **IV. RESPONSIBILITY FOR CAPTIONING**

PRIMESTAR agrees with the Commission’s assertion that captioning at the production stage is the most efficient manner by which to include closed captioning with video programming. *Notice* at 18. However, PRIMESTAR disagrees with the Commission’s further suggestion that program providers are in the best position to ensure that the programming they distribute is closed captioned, and therefore should be held responsible for compliance with the closed captioning regulations.

The commenting parties are variously split regarding this question of responsibility. Some agree with the Commission that the program provider should be held responsible.<sup>8</sup> Others believe that the responsibility lies with the program producer.<sup>9</sup> A few commenters suggest both parties should be held accountable.<sup>10</sup>

PRIMESTAR continues to believe that program producers are in the best position to bear the responsibility for compliance with the regulations. PRIMESTAR and other distributors merely pass through program signals from their programming sources to viewing subscribers. By virtue of the services these distributors provide, they have no physical capacity to add captions to programming after it has been created by the producer and scheduled by the networks. In addition, the lack of captioning requirements in most affiliation agreements between PRIMESTAR and other distributors and their network and other production sources would necessitate the renegotiation of such contracts. Under current contracts, PRIMESTAR is prohibited from adding material, including closed captioning, to the signals it retransmits.

In the event the Commission does place compliance responsibility on program providers, PRIMESTAR agrees with The National Cable Television Association that such providers should be able to satisfy their obligations under the regulation by ensuring that all captioned programming is retransmitted intact, and by obtaining certifications of captioning from their programming sources.<sup>11</sup> Such good faith effort on the part of the program

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<sup>8</sup> Comments of Northern Virginia Resource Center for Deaf and Hard of Hearing Persons.

<sup>9</sup> Comments of Ameritech; Satellite Distributors Cooperative.

<sup>10</sup> Comments of Access to Independence and Mobility.

<sup>11</sup> Such certification would be similar to that provided by networks to their local affiliates regarding compliance with limitations placed on advertising in children's programming.

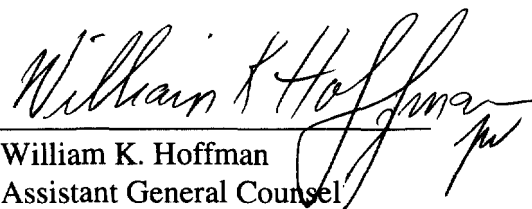
provider would allow the Commission to focus its monitoring efforts at the point of program distribution to the public while, at the same time, protecting providers such as PRIMESTAR from unreasonable liability for production and scheduling matters over which they have no control.

## **V. CONCLUSION**

For the foregoing reasons, the Commission should modify its proposed closed captioning rules to conform to the suggestions stated herein and in PRIMESTAR's previous comments in this proceeding.

Respectfully submitted,

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March 31, 1997



**CERTIFICATE OF SERVICE**

I, Jette Ward, a secretary with the law firm Reed Smith Shaw & McClay, hereby certify that on this 31st day of March, 1997, I have caused to be delivered the foregoing **"REPLY COMMENTS OF PRIMESTAR PARTNERS L.P."** by first class mail, postage prepaid, to the following persons:

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